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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2127 OF 2005
IN
SUIT NO.428 OF 2004

Vijay Amrit Multani).. Plaintiff

Versus

Vinod R. Hinduja and others).. Defendants

Mr.Chetan Kapadia with Ms.H.Khokhawala i/b.M/s.Nankani & Associates for the Plaintiff.

None present for the Defendants.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 27TH APRIL 2006

P.C.:

. It is the case of the Plaintiff that the Defendants have wrongfully held with the properties and assets of his deceased grandfather Bhajanlal Hasija who expired on 19th May 2003. The deceased had two daughters. The Plaintiff is the son of one of the daughters and Defendant Nos.1 and 2 are the children of the other daughter, while Defendant No.3 is their father. Both the daughters as well as the wife of Bhajanlal Hasija pre-deceased him. It is the case of the Plaintiff that the entire estate of the deceased Bhajanlal Hasija should be divided between the heirs of the deceased as there are no other legal heirs. The Plaintiff contends that he is entitled to 50% of the estate of the deceased while the Defendants are entitled to the remaining half. The Plaintiff has annexed at

Exhibit "B" to the Plaint the schedule of properties owned by the deceased Bhajanlal Hasija. These include immoveable and moveable properties as well as Bank accounts, Fixed Deposits, Shares, Units and other assets held by the deceased at the time of his death. The Plaintiff, therefore, seeks appointment of the Receiver in respect of these properties to ensure that they are not frittered away and the Defendants do no intermeddle with the same during the pendency of the Suit.

2. In reply to the Motion, Defendant No.3 has pointed out that Bhajanlal Hasija had left a Will and Testamentary Petition No.248 of 2004 has been filed before this Court which has been converted to Suit No.24 of 2004. The Plaintiff has opposed the grant of a probate. According to Defendant No.3, the property at A to Z Industrial Premises Co-operative Society Ltd. has already been transferred to his name since he was the nominee of the deceased. In respect of the car which is one of the assets mentioned in Exhibit "B" to the Plaint, Defendant No.3 has stated that it has already been disposed off for an amount of Rs.40,000/-.

3. It is in these circumstances that the Plaintiff urges that the Court Receiver be appointed in respect of the estate of the deceased Bhajanlal Hasija.

4. This Court has already granted ad-interim reliefs in terms of prayer clauses (b) and (c) of the

Motion. The only question, therefore, which remains is whether the Court Receiver should be appointed.

5. In my view, the Plaintiff has made out a case for appointment of Court Receiver. Defendant No.3 has transferred some of the properties to his own name only by virtue of a nomination. It is a well settled position in law that a nominee cannot be entitled to the estate of the deceased to the exclusion of the heirs of the deceased.

6. Hence, Notice of Motion made absolute in terms of prayer clauses (a), (b) and (c).

7. The Court Receiver shall take symbolic possession of the immoveable properties listed in Exhibit "B" to the Plaint, in the event the Defendants are in possession of the same. The Defendants may be appointed as agents of the Receiver in respect of those properties subject to payment of royalty and security. The Agency Agreement to be executed within eight weeks from today.

9. In the event the Defendants do not execute the Agency Agreement within the stipulated period, the Court Receiver shall call for bids by public auction and appoint a suitable person as agent of the Court Receiver on payment of royalty and security on the usual terms and conditions.